

Corporate Traveller's role as data controller for purposes of the General Data Protection Regulation



The role of Corporate Traveller as data controller

This white paper sets out how and why Corporate Traveller (CT) operates as an independent data controller for the purposes of the General Data Protection Regulation (GDPR) when processing the personal data of our clients' employees. It was produced as part of our ongoing data protection review process, led by our internal data protection and legal teams, assisted by external legal counsel with specialisation in the travel industry. We have also relied on guidance from European Data Protection Board, ICO and other EU regulations to reach this outcome.

Defining controllers and processors under GDPR

The roles of controller and processor are defined within Article 4 GDPR. A controller is an individual or entity which alone or jointly with others determines the purposes and means of the processing of personal data. A processor is an individual or legal entity which processes personal data on behalf of the controller. It is important to note that an organisation will be a controller or a processor in respect of each of its processing functions as a matter of objective fact, irrespective of how it might have labelled itself. Simply contracting as a processor does not make an organisation a processor.

To place the concept of determining the purpose and means of processing in context, essentially controllers are the main decision makers in the processing of personal data, whereby a processor does not have any purpose of their own for processing that data. Rather, processors act on behalf of, and only on the instructions of, the controller. It is the controller who makes overarching decisions, such as what types of personal data to collect and the purpose(s) for which the personal data will be used. While a processor may still make technical decisions about how to process the data, they will not take these key decisions.

CT acting as the controller by determining the purpose and means of processing

To assist organisations in determining whether they are acting as a controller or processor

for their processing of personal data, the UK's Information Commissioner's Office (ICO) and the European Data Protection Board (EDPB) have issued detailed guidance on this topic. This includes a non-exhaustive list of factors that can be utilised to evaluate whether an organisation is a controller or processor. Applying these factors as part of an objective assessment of the data processing operations undertaken by CT, it is clear we are operating as a controller for the provision of corporate travel services. A selection of these factors is set out below along with the justifying rationale based on the business processes designed and implemented by CT.

- **CT decides both to collect and process the personal data, as well as the purpose or outcome of the processing itself.**

The service offerings provided by CT are ultimately determined solely by CT and in this regard, we are deciding the purposes of the personal data we choose to process. Mandatory data elements required to be provided before we can offer contracted corporate travel services to clients and their employees are also set by CT. Finally, the development of our technical offerings such as online booking tools, including their functionality and data processing requirements, is also determined solely by CT.

- **CT decides what personal data should be collected.**

To provide corporate travel services, CT sets the mandatory minimum data elements to be provided for all travellers that are prerequisites for setting up each traveller's profile, being first-name, last-name and unique email address. While additional personal data elements are optional for the traveller to provide (e.g. emergency contacts, meal preferences, frequent flyer programmes, special assistance requirements, etc.) the data elements themselves are options set by CT. Taking this example a step further, if a corporate client were to determine what personal data to provide or withhold, it's likely CT will not be able to provide the services, as corporate clients will not have the professional experience or industry knowledge to accurately assess what data is necessary given global and multi-jurisdictional nature of travel services offered.

- **CT make decisions about the individuals concerned as part of or as a result of the processing.**

The provision of global travel services utilising a massive network of third-party suppliers with a vast range of options, while operating within the constraints of the client's travel policy, is a complex and specialised endeavour. It involves CT staff constantly making independent decisions over the processing of each traveller's personal data to ensure their contracted services are provided. A client employee may wish to travel from point A to B, to C with specific dates. It is CT's experienced and professional staff who organise the best routes, hotels, airport pickups and drop-offs to ensure client employees have a seamless journey with all planning expertly taken care of in the background.

- **CT exercise professional judgement in the processing of the personal data.**

While a client may choose to implement their travel policy (i.e., the booking rules governing the nature of the travel services that each of their employees may utilise), both the client and their travellers are relying upon the expertise of CT staff to ensure the smooth operation of this policy. Indeed, the true value-add provided by CT's corporate travel offerings is the professional judgement and expertise of our staff, enabling clients to realise saving and their staff to enjoy frictionless travel.

- **CT has a direct relationship with the travellers (data subjects).**

Our account managers and booking teams for corporate clients directly manage both the relationship with the clients' representatives, but they also deal directly with the travellers (being the data subjects). This is to book travel services for those travellers who choose to make off-line bookings (i.e., bookings made outside of online booking tools), to providing tailored travel advice and to troubleshoot any issues that may arise at any point from booking through travel and post-trip.

- **CT has appointed processors to process personal data on our behalf.**

The establishment of a network capable of providing global travel services to clients ranging from micro-enterprises through to multinational

conglomerates would not be possible without the involvement of third-party suppliers. Given travel services often require the transfer of personal data, it is unavoidable that some of these vendors will operate as processors of CT. Each of these processors have been appointed by CT subject to strict due diligence, meeting all the requirements for appointing processors as set out in the GDPR. This is one of the factors set out by EDPB as per appendix 1 (Guidelines: European Data Protection Board, 2020)

- **CT determines how long the personal data should be retained.**

CT has put in place a data retention policy which sets out which type of personal data can be retained and for how long. The retention periods are based on CT's legitimate business interests as a publicly listed company, as well as to meet its legal obligations as a data controller.

CT provides contracted travel services for clients as a controller

The fact that our corporate businesses process personal data in the performance of contracted travel services for clients does not negate our status as a controller. This is because a service relationship does not, in and of itself, mean that the service provider is a processor. As stated in the GDPR, whether an entity is operating as a controller or processor is a determination of fact where the overall context of the processing activities and relationships must be evaluated. Based on the contextual analysis of the factors set out above, CT is a controller in respect of the data it processes in its corporate businesses regardless of the fact we are providing contracted services to clients.

In addition, should the client choose to provide their employee data directly to CT this will have no impact on our role as controller as a data controller can obtain the data that it processes from a third party. Indeed, Article 14 of the GDPR was specifically intended to cover scenarios where an entity processes personal data in the capacity of a controller in situations where the data was obtained from a third party (such as an employer) rather than the data subject directly.

Responsibilities of CT as the data controller

As a data controller, CT is responsible for ensuring all data processing we undertake complies with the GDPR. This includes any processing undertaken by our contracted data processors. These responsibilities include, but are not limited to, the following:

- Complying with the overarching principles of data protection principles as listed in Article 5 of the GDPR.
- Ensuring individual data subjects can exercise their rights regarding our processing of their personal data.
- Implementing appropriate technical and organisational measures to ensure the security of personal data.
- Only engaging processors under binding contracts that; (i) contain the compulsory provisions specified within Article 28(3) of the GDPR, and (ii) provide sufficient guarantees on implementing appropriate technical and organisational measures.
- Notifying personal data breaches to relevant supervisory authorities in the EU and affected individuals, in accordance with GDPR requirements.
- Complying with all accountability obligations under the GDPR, including but not limited to maintaining all required records, data protection impact assessments and appointing a data protection officer.
- Ensuring all international transfers of personal data comply with the restrictions set out in Chapter V of the GDPR.
- Appointing and maintaining a representative within the European Union where required.
- Cooperating with supervisory authorities and helping them perform their duties.

Benefits to clients of CT operating as a controller

The GDPR imposes substantive risks and obligations on data controllers. When outsourcing their corporate travel, by contracting the services of an expert travel management company that operates as an independent controller, our clients benefit from the fact that these risks and obligations are necessarily assumed by CT. Key benefits enjoyed by our clients include the following:

- Reduction in assessment and mapping obligations: As the data controller, CT takes ownership of the

obligation to undertake and maintain accurate data flow mapping within the complex ecosystem of global travel systems. Linked to these personal data flows, CT also acquires the responsibility to conduct all required data protection impact assessments.

- Reduction in ongoing compliance obligations: Clients reduce their overall compliance burden for their travel programme, as it falls to CT as the data controller to fully produce and maintain all registers, policies, processes, etc., in accordance with the GDPR. CT is responsible both for ensuring all personal data is processed in accordance with the principles set out in Art.5 GDPR, as well as being able to demonstrate such compliance.
- Transfer of risk: As the data controller, CT assumes the responsibility for the data collected from the client, including meeting all GDPR obligations in relation to the appointment of data processors. It becomes the responsibility of CT to conduct risk assessments of both our internal systems as well as those of our vendors.
- Transfer of legal and technical obligations: CT becomes directly responsible for all assessments and actions in the event of a data breach, including reporting to supervisory authorities and impacted individuals. CT also has the obligation to ensure appropriate technical and organisational measures are implemented across all our systems (and those of our selected processors) to maintain the confidentiality, integrity and availability of the personal data.

Other controllers in the provision of travel services

Due to the inherent complexity of providing travel services, and the requirement to make independent decisions on the purpose and means of processing personal data, most entities within this ecosystem are necessarily controllers. In addition to corporate travel providers (i.e., CT), other independent controllers include global distribution systems (GDS), online booking tools, airlines, industry accreditation bodies, hotels, rail companies, car hire providers and cruise operators. CT solely decides which other data controller to share personal data with, in order to achieve the purpose of data collection, which is provision of services procured by our clients and their staff.

Appendix 1- Flowchart providing a high-level view of how CT determined it's an independent controller, based on EDPB guidance July 2020

